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8 Attorneys for Creditor
9 Deutsche Bank National Trust Company, as
10 Trustee for American Home Mortgage Assets Trust
11 2007-2, Mortgage-Backed Pass-Through
12 Certificates Series 2007-2

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14 **UNITED STATES BANKRUPTCY COURT**
15
16 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

17 In re
18
19 Fanny Giraldo
20 Debtor.

Case No. 2:19-bk-13717-VZ

Chapter 13

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28 **OBJECTION TO CONFIRMATION OF
DEBTOR'S CHAPTER 13 PLAN OF
REORGANIZATION**

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30 **SUBJECT PROPERTY:**

31 24969 Avenida Balita
32 Valencia, CA 91355

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34 **CONFIRMATION HEARING:**

35 DATE: March 9, 2020
36 TIME: 9:00 AM
37 PLACE: 255 E Temple St., Los
38 Angeles, CA 90012
39 CTRM: 1368
40 JUDGE: Vincent P. Zurzolo

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42 Deutsche Bank National Trust Company, as Trustee for American Home Mortgage Assets
43 Trust 2007-2, Mortgage-Backed Pass-Through Certificates Series 2007-2, by and through its
44 authorized loan servicing agent, Ocwen Loan Servicing, LLC (collectively the "Creditor"),
45 secured creditor of the above-entitled debtor, Fanny Giraldo ("Debtor"), hereby objects to
46 confirmation of the Chapter 13 Plan filed by the Debtor in the above-referenced matter. The basis
47 of the objection is stated below:¹

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I. STATEMENT OF FACTS²

On or about November 27, 2006, Debtor executed a promissory note in the original principal sum of \$560,800.00 (the “Note”) which was made payable to American Brokers Conduit. (“Lender”). The Note was and remains secured by a recorded deed of trust (the “Deed of Trust”) encumbering the real property located at 24969 Avenida Balita, Valencia, CA 91355 (the “Subject Property”). Subsequently, Lender’s beneficial interest under the Deed of Trust was transferred to Creditor.

On April 2, 2019, Debtor filed the instant Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Central District of California - Los Angeles Division, and was assigned case number 19-13717.

On April 15, 2019, Debtor filed her Chapter 13 Plan (“Plan”) which provides for Creditor’s claim in Class 2. The Plan includes payments towards Creditor’s claim; however, the figures used by the Debtor are inaccurate. It is anticipated that Creditor’s claim will show the pre-petition arrearage due to Creditor in the amount of \$84,902.93, whereas the Plan proposes to pay only \$71,739.69.

II. ARGUMENT

A. DEBTOR'S CHAPTER 13 PLAN CANNOT BE CONFIRMED BECAUSE IT DOES NOT PROMPTLY CURE CREDITOR'S PRE-PETITION ARREARS AS REQUIRED BY 11 U.S.C. §1322(b)(5)

Section 1325(a)(1) requires that “the plan complies with the provisions of this chapter and with the other applicable provisions of this title.” 11 U.S.C. § 1325(a)(1). Section 1322(b)(5) requires that all chapter 13 plans must provide for the “curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is

expressly or impliedly through Robertson, Anschutz, & Schneid's participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

²Pursuant to Rules 201(b) and 201(d) of the Federal Rules of Evidence, which are made applicable to this proceeding by Rule 9017 of Federal Rules of Bankruptcy Procedure, Creditor requests that the Court take judicial notice of the sworn bankruptcy schedules and other relevant documents filed in the instant case.

1 due." Further, section 1322(b)(2) prohibits debtors from modifying the rights of secured creditor
2 whose security interest is secured solely by the debtor's principal residence.

3 In the present case, the major deficiency with Debtor's Plan is that it incorrectly asserts the
4 outstanding arrearage balance of Creditor's pre-petition claim. Specifically, Debtor's Plan states
5 that Creditor's pre-petition arrears are only \$71, 739.69; however, Creditor anticipates³ that its
6 claim will reflect pre-petition arrears in the amount of \$84,902.93. Accordingly, Debtor's Plan
7 fails to meet the requirements of section 1325(a)(1) because it does not provide to promptly cure
8 the entire outstanding balance of Creditor's arrearage claim as required by section 1322(b)(5).
9 Based upon the foregoing, the Court should deny confirmation of the Debtor's Plan. In the
10 alternative, the Court should confirm the Plan with a provision stating the Debtor must cure
11 Creditor's entire pre-petition arrears, estimated in the amount of \$84,902.93, in equal monthly
12 payments over a period of time not to exceed (60) months.

13 **WHEREFORE**, Creditor respectfully requests:

14 1. That the Court deny confirmation of the Debtor's Plan;
15 2. For such other and further relief as this court deems just and proper

16
17 Respectfully submitted,

18
19 **ROBERTSON, ANSCHUTZ & SCHNEID, P.L.**

20 Dated: 4/26/2019

/s/ Sean Ferry (SBN 310347)

21 **SEAN FERRY**

22 Attorneys for Deutsche Bank National Trust
23 Company, as Trustee for American Home Mortgage
24 Assets Trust 2007-2, Mortgage-Backed Pass-
25 Through Certificates Series 2007-2

26
27
28 ³The deadline for filing a proof of claim is June 11, 2019.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
7676 Hazard Center Drive, Suite 500
San Diego, CA 92108

A true and correct copy of the foregoing document entitled (specify): _____
OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN OF REORGANIZATION

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 4/26/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below: Charles J Brash lawofficescbrash@aol.com, brashcr78877@notify.bestcase.com

Charles J Brash lawofficescbrash@aol.com, brashcr78877@notify.bestcase.com

Nancy K Curry (TR) TrusteeECFMail@gmail.com

Sean C Ferry sferry@ecf.courtdrive.com, bkyecf@rasflaw.com

United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 4/26/2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Fanny Giraldo Charles J Brash
24969 Avenida Balita 24405 Chestnut St Ste 207
Valencia, CA 91355 Newhall, CA 91321

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

4/26/2019 Sean C. Ferry
Date Printed Name

/s/ Sean C. Ferry
Signature